A Local Authority v JB [2020] EWCA Civ 735; [2019] EWCOP 39

Emnani Subhi¹

Accepted: 26 January 2021 / Published online: 16 March 2021
© The Author(s) 2021

Abstract

In *Re JB*, a local authority, concerned with the risk the respondent posed to vulnerable women, successfully appealed against an order made in the Court of Protection that declared JB, an autistic man with impaired cognition, possessed capacity to consent to sexual relations. In this recent decision, the Court of Appeal has arguably reset the last 15 years of jurisprudence concerning P’s capacity to make decisions in regard to sexual relations. Previous case law focused on P’s ability to consent to such relations, and whether P understood the information relevant to that decision. Notwithstanding the abundance of legal authority, including the recent appellate judgments of Hayden J in *London Borough of Tower Hamlets v NB and AU (consent to sex)* [2019] EWCOP 27. and *B v A Local Authority* [2019] EWCA Civ 913. there was a lacuna in the existing law in relation to what information was relevant for the purposes of assessing the issue of capacity to consent to sexual relations. Judges have traditionally adopted a protectionist stance in understanding “the information relevant to the decision” under s3(1) of the Mental Capacity Act 2005 (MCA), with an emphasis on whether P understood the risks of pregnancy and sexually transmitted diseases. However, the Court of Appeal in *Re JB* has broadened its interpretation of ‘relevant’ information to also include the ability to understand the importance of a partner’s consent to such relations. This is a welcome change to previous courts’ interpretations of the ‘nature’ of the sexual act, moving from an approach focused on the physical sexual mechanics to one which views the nature of sex as a mutually consensual engagement. However, a fundamental shift in how we view such cases is likely to have far-reaching consequences, particularly for local authorities and professionals seeking guidance in relation to their care planning.

Keywords Mental capacity · Mental Capacity Act 2005 · Safeguarding · Sexual consent · Sexual relations · Sexual violence · Vulnerability

✉ Emnani Subhi
e.subhi2@newcastle.ac.uk

¹ Newcastle Law School, Newcastle University, 21-24 Windsor Terrace,
Newcastle-Upon-Tyne NE1 7RU, England, UK

Background

The proceedings concerned the capacity of JB, a 36-year-old man with a complex diagnosis of autism spectrum disorder combined with impaired cognition. The applicant local authority filed an application in the Court of Protection, seeking declarations as to his capacity in various matters. JB had expressed in explicit terms his strong desire to have a girlfriend and engage in sexual relations. Restrictions were already imposed on his ability to socialise freely to prevent him behaving in a sexually inappropriate manner towards women, and evidence showed he lacked the insight and ability to communicate appropriately with women to whom he was attracted. The local authority was concerned that, if left unrestrained, JB's behaviour might expose him to the criminal justice system and pose a sexualised threat to potentially vulnerable women. He felt these restrictions represented an unjust and unwarranted interference to basic rights to a private and family life, reflected in Article 8 of the European Convention of Human Rights. Hearing the case in the Court of Protection, Roberts J restated the basic principles recently approved in the unanimous Court of Appeal judgment in *B v A Local Authority*. These are summarised as follows [para 18]:

- i. The presumption of capacity unless established otherwise
- ii. All practicable steps to help P are to be taken before they are treated as unable to make a decision
- iii. An unwise decision does not automatically render P incapacitous
- iv. Capacity determinations require an application of an 'act-specific' test
- v. Possessing the capacity to make a decision depends on the ability to understand, retain or use or weigh the information relevant to the decision and to communicate that decision, as per s3(1) of the Mental Capacity Act 2005
- vi. The definition of 'relevant information' is to depend on the nature of the decision to be made but will include the reasonably foreseeable consequences of making or failing to make that decision (s3(4))

The legal framework set out in the initial proceedings relied on the principles distilled by Hayden J in *London Borough of Tower Hamlets* [para 17 to 37]. Robert J endorsed his analysis of the application of an 'act-specific' test; that an assessment of capacity to consent to sexual relations ought to be centred upon an evaluation of a person's ability to make a specific decision at a specific time, rather than an assessment of their general ability. The MCA's approach thereby promotes an individual's opportunity to achieve capacity status. There was also a recognition for the intricacies of interpersonal relationships as being equally driven by instinct and emotion as by rational choice. In *IM v LM and Others*,¹ Sir Brian Leveson crucially observed that the process of decision-making in sexual relations—even in capacitous individuals—is "largely visceral than cerebral, owing more to instinct than to analysis" [para 80]. The main purpose of the MCA was said not to limit risk of harm or offer

¹ [2014] EWCA Civ 37.

absolute protection, but rather to promote capacity and provide “the fullest experience of life with all its vicissitudes” [para 56 in *B*].

The principal issue before the Court of Protection was whether JB had capacity to consent to sexual relations. More specifically, whether in the test for capacity to consent, the need for JB to understand the voluntary nature of sexual activities should extend to an understanding that it also requires sexual partners’ consent. In other words, does the “information relevant to the decision” under s3(1) of the MCA include the fact that the other person must be able to, and does in fact (from their words and conduct), consent to such activity? Roberts J held that, in determining the fundamental capacity of an individual in relation to sexual relations, “the information relevant to the decision” did *not* include knowledge of the other person’s [continued] consent [para 87]. The view of the court was that requiring an understanding of parallel and continued consent in a sexual partner imposed a test for capacity which was set too high. Further, where the joint expert had ultimately assessed JB as possessing capacity to consent to sexual relations, and where JB had explicitly expressed his desire to experience sexual and romantic relations, to impose a requirement of full appreciation of both his own and a partner’s initial and ongoing consent throughout the duration of the sexual act was said to impose a burden which even a capacitous person might not share. Accordingly, the judge’s order included a declaration that JB possessed capacity to consent to sexual activity.

Issues and decisions

The main issue for the Court of Appeal was specifically whether JB, in order to be deemed capacitous to engage in sexual relations with another person, needed to understand that the other person had to at all times be consenting to the sexual activity. The consideration of the other person’s consent is absent from the MCA’s provisions and case law interpretations. They instead provide that the relevant information is only that a person should be able to understand, retain and use or weigh:

- i. The nature, character, and mechanics of the sexual act;
- ii. The possibility of pregnancy in heterosexual sex;
- iii. The possibility of sexually transmitted infection; and
- iv. That the person could say yes or no to sex.

Expressed in terms of capacity to ‘engage’, Baker LJ, providing the sole judgment, decided that the “information relevant to the decision” inevitably included the fact that the other person had to be able to consent to the sexual activity and did, in fact, consent to it [paras 94 and 100]. The appeal was allowed and the declaration that JB had capacity to consent to sexual relations set aside. The matter was remitted to the judge for reconsideration of JB’s capacity in light of the Court of Appeal’s judgment.

Discussion

Case law in this area has not been scant but has been somewhat confusing and inconsistent, particularly on the issue of what is considered ‘relevant information’.² The earliest case cited was *X City Council v MB and Others*.³ Although heard before the implementation of the MCA, Munby J’s judgment is noteworthy in the evolution of the case law. This concerned an application for a declaration that a man lacked the capacity to marry. Though there was no application for an order in relation to sexual capacity, it was considered appropriate to address that issue. Interestingly, Munby J posed the question in the following terms with reference to both consent and the ability to engage: “How then is one to assess whether someone has the capacity to consent to sexual relations, the ability to choose whether or not to engage in sexual activity?” [para 65]. He conflates the issues of capacity to consent and that of the ability to choose to engage. Nevertheless, his question is the closest allusion to sexual relations in terms of ‘engagement’. Subsequent case law has repeatedly focused on the first half of the question regarding consent, whilst the issues of engagement and mutual consensuality have gone largely ignored until now.

In *JB*, the Court of Appeal made clear that a fundamental element of the information relevant to the decision of whether to engage in sexual relations therefore should include an understanding that such activity could only take place when, and only for as long as, the other person was consenting. This is not entirely inconsistent with previous case law: as in *B* [2019], “what comprises relevant information...has developed and become more comprehensive with time”. This is further substantiated by the detailed and complex “relevant information” identified by Cobb J’s in *Re A (Adult) (Capacity, social media and internet use)*,⁴ and the Court in *IM* [2014] stressed that:

the notional process of using and weighing information attributed to the protected person should not involve a refined analysis of the sort which does not typically inform the decision to consent to sexual relations made by a person of full capacity. [para 81]

Certainly, the other person’s consent should be something normally considered in sexual relations. Indeed, Baker LJ emphasised that his analysis in *JB* was not solely limited to that case, but that “this is how the question of capacity with regard to sexual relations should normally be assessed in most cases” [para 92].

From passive consent to active engagement

“[Sexual relations] can only take place with the full and ongoing consent of both parties.” Baker LJ [para 6] (third principle) and [para 94]. At the start of his judgment in the Court of Appeal [paras 4 and 5], Baker LJ declared three principles that

² For more details about how this judgment might play out in a medical setting, see: Pritchard-Jones 2000.

³ [2006] EWHC 168 (Fam).

⁴ [2019] 3WLR 59.

the court has to balance in relation to sex and capacity: Autonomy (as defined in Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),⁵ and central to the MCA); protection of vulnerable people; and the necessity of full and ongoing consent of both parties. This opening echoes the challenges for professionals in this field who strive to promote their freedom to engage in sexual relations with the same equality as their non-mentally impaired counterparts yet often encounter people, who in the exercise of autonomy, are made incredibly vulnerable to harm and exploitation (Currie 2020). Balancing individuals' rights against the need to protect them (and others) from risks is a difficulty known to policy makers (Hollomotz 2011, 38). Baker LJ said that the fundamental decision is whether P has the capacity to "engage" in sexual relations, rather than whether P has the ability to "consent" [paras 92–94]. This shift away from the previously mechanical interpretation of capacity towards a different representation of the 'nature' of the activity is especially significant. Framing capacity in terms of 'engagement' makes the decision-making less abstract and more active; assessing the capacity to 'engage' in sex inevitably involves the consideration of the other party.

As this case illustrates, giving consent to sexual relations is only one part of the decision-making process. Social workers now must grapple with the notion of engagement and factor the consent of others (in the 'understanding' component of capacity to sex) into their assessments. Where the focus is solely on consent, the bar is set lower that a finding of incapacity is unlikely, yet the risks of acting on that capacity can be huge. This point is perhaps best exemplified in a case which garnered much media attention involving the repeat exploitation of an autistic woman with an IQ of 52 and severe learning difficulties. Social workers in a Manchester care home were heavily criticised for allowing her to have high-risk sexual encounters with strangers on the basis that it might help her to "learn from her mistakes" (Sawer 2018). Whilst all activities carry risks, and one of the benefits society offers its citizens is the right to make mistakes and unwise decisions (Kaeser 1992, 37), the case above is a strong argument for protection taking precedence over sexual freedom in extreme circumstances.

Nonetheless, these two concepts do not exist independently from one another; one cannot make a truly autonomous and free decision if guided by exploitative forces. Indeed, what constitutes a 'free' and 'autonomous' decision is highly contested, both in a philosophical sense and in the context of consent to sexual relations. There is a wealth of literature on autonomy, but broadly speaking it is accepted that to have 'autonomy' means to live one's life according to your person, and not by manipulative or distorting external influences (Dworkin 1989; Kant 1997; Mackenzie et al. 2000). The notion of autonomy is generally understood by feminist writers in a similar way: acting on motives, reasons and values that are one's own (Benson 2005, 126). In the context of sexual relations, consenting to sex should be seen as something two people mutually engage in, rather than something one person does for the other to submit to. However this is conceptualised, and wherever this line is

⁵ Article 3(1), "the freedom to make one's own choices, and independence of persons".

drawn in attempts to balance protection from sexual violence and freedom to engage in sexual relations, taking into consideration the need for the other party to engage in sexual relations is crucial.

This change in approach will likely, however, make assessments by social workers and courts trickier in long marriage or partnership, where one partner loses capacity status in several areas of life due to dementia. This was considered by Hayden J at a preliminary Court of Protection hearing, where he reflected on the rights of a man to engage in sex with his wife who had recently been deemed incapacitous in several areas of life after the deterioration of her condition.⁶ This case also underscores the importance of moving away from a version of capacity which primarily focuses on one person's consent. While the husband's capacity was not in issue in this case, it surely cannot be his human right to have sex with his wife. He has a right to mutually consensual sexual relations, one could say, as much as she has the right not to be sexually violated by him. The other person's consent is always going to be a relevant factor to be able to engage in sexual activity.

"Vulnerable women"

An interesting observation is the distinction Baker LJ draws for the likely victims of JB's inappropriate behaviour. The word 'risk' and the phrase 'vulnerable women' are used repeatedly in the judgment; a clinical psychologist's report provides a helpful insight into the risk JB poses to women:

... this is most likely to take the form of sexual harassment through the form of repeated, unwanted sexually explicit messages to females...[JB] has also been observed to have limited social boundaries around women, particularly those who are vulnerable... the risk is of [JB] sexually touching these women without [their] consent. In terms of vulnerable women who do not have the capacity to consent to sexual relations, there is a risk of [JB] not recognising or respecting this fact, resulting in the potential for rape to occur. [para 6.2.1]

Thus, whereas JB has no problem understanding the mechanics of sex, he may be ignorant of the importance of the intentions of others, and more so to the concept of the need for a partner to consent. There is no denying the gendered dimension of sexual violence; women experience the highest incidence of sexual violence. The Crime Survey of England and Wales estimate the prevalence of rape to be 3.1% for women and 0.8% for men (2016–2017). This explains why women are frequently singled out and labelled as inherently 'vulnerable'. By this fact alone, any woman, irrespective of her capacity status, who socialises or communicates with JB could be considered 'vulnerable' to his inappropriate sexual behavioural tendencies. Whilst both women and those with disabilities are groups exposed to a higher risk of sexual violence, this is especially true in the case of women who also possess some form of cognitive impairment, such as a learning disability. The heightened likelihood of

⁶ *London Borough of Tower Hamlets v NB* [2019] EWCOP 17.

disabled women experiencing a sexual assault is of statistical significance (McCarthy and Thompson 1997, 107).

Our vague understanding of the causes and circumstances surrounding sexual violence against people who lack the standard capacities of most is often translated into an assumption of ‘risk’. It is not always easy to identify what there is to fear from whom and in which situations, but the high incidence of sexual violence against this population reinforces the view that there *is* something to fear. This is expressed in the label of ‘vulnerability’ (Hollomotz 2011, 34). Murphy notes that this concept is a feminised one, especially in the context of sexual violence (2012, 70). A growing body of legal literature on vulnerability has provoked interesting discourse, in which there is significant debate about the concept’s ability to facilitate sexual autonomy (Clough 2014, 371). In a similar vein, one commentator argues that mental capacity legislation misuses the concept to restrict and control victims, rather than target the perpetrators (Lindsey 2020, 225). While Fineman and Butler have argued that vulnerability is an inherent part of the human condition which demands a more responsive state (Fineman 2008, 2) and provides the starting point for a non-violent ethical politics (Butler 2004, 29), the concept’s connotations with fragility, dependence and susceptibility render its association with femininity problematic. ‘Vulnerability’ may be used to justify a legal approach to sexual capacity that establishes power dynamics and is overly paternalistic. Indeed, widespread stereotypes about learning-disabled people as deviating from the sexual norm were historically prevalent in Britain (Sandland 2013, 981); women, in particular, were seen as possessing a pitiful asexuality or, by contrast, an abnormal hypersexuality, and therefore vulnerable and in need of the state’s ‘protection’, which included institutionalisation (Perlin and Lynch 2016, 9). This disregard for women’s sexual desires comes at the expense of their liberties and sexual freedom. If someone is found to lack sexual capacity, a best interests decision in relation to sex cannot be made. It then falls on those responsible for their care to prevent them from engaging in sexual activity. In practical terms, this can mean imposing restrictions on the ability to enter and leave their residence, close supervision to limit social interaction, or the heavy regulation of contact, both online and in person, with sexual partners.⁷ Although the deployment of ‘vulnerability’ has a questionable status in feminist literature, the term is often used in cases and policy papers.

In the Home Office’s ‘Setting the Boundaries’ Review (2000), which ultimately culminated in the Sexual Offences Act 2003, the Government acknowledged mentally disordered individuals as a group it considered vulnerable based on evidence that they may be “easily induced or persuaded into a sexual relationship and are targeted by others for their own sexual gratification” [para 4.2.2]. It explained that they may not be able to resist inappropriate behaviour or be too afraid to challenge their violator. Although both men and women can be vulnerable, a woman’s condition of ‘vulnerability’ is contrasted with the threat that JB, a cognitively impaired yet sexually disinhibited male, presents. Hence, JB’s vulnerability is expressed in terms of the risk of harm to others, and exposure to the criminal justice system should he

⁷ *A Local Authority v H* [2012] EWHC 49 (COP) at [13]; *Re MM* [2007] EWHC 2003 (Fam) at [155].

act inappropriately towards someone. The risk to him, therefore, is in relation to the ‘harm’ he might experience as a potential perpetrator of sexual violence rather than the inarguably incomparable harm experienced as a victim. Perhaps unsurprisingly then, in proceedings concerning a cognitively impaired man, his vulnerability is often couched in terms of protecting him from committing a sexual crime and protecting others from his potential threat. In *D Borough Council v AB*,⁸ a local authority successfully sought a declaration that a man in their care did not have capacity to consent to sexual relations after two reports that he had displayed sexually inappropriate behaviour towards children. The clinical psychologist sought to supply more specificity to the MCA’s test by proposing a requirement that DB understood the age of consent. In the recent case of *Re TZ No.2*,⁹ a man with atypical autism was deemed to possess sexual capacity because understanding the risks of pregnancy was not a relevant factor for him as a gay man. ‘Relevant information’ must therefore be tailored to the facts of the case.

Typically, where proceedings concern women, the protection from the threat of coercion, sexual exploitation and serious harm, almost always at the hands of male perpetrators, is prioritised. In *A Local Authority v H*,¹⁰ a finding of incapacity was made in a young woman’s best interests who demonstrated a deep degree of sexualisation, and who had been subjected to exploitative and abusive behaviour by several men over many years. Similarly, the Court of Protection in *London Borough Hamlets* [2019] considered the appropriate placement of a woman who had been subject to domestic abuse, and found that on the issue of sexual relations, she did not possess capacity, as she had “barely an inkling” of the health risks and had no idea that she could refuse sex. Previous case law has therefore assumed that the mentally impaired woman is the party who is being actively pursued. Sexual consent has been traditionally understood, as Anderson explains, in terms of “a woman’s passive acquiescence to male sexual initiative” (2005, 1406). Although this might seem like a troubling representation of vulnerable people, and of women specifically, it is important not to lose sight of the fact that women with intellectual disabilities are disproportionately affected by sexual violence (Munro 2017, 424). This is an argument in favour of including a requirement of ongoing consent and supports Baker LJ’s stance on the Court of Protection’s role in the wider legal sphere. He deemed it “wrong and unprincipled” to exclude this requirement on the basis of maintaining separate functions of the civil law under the MCA and that of the criminal justice system [para 97]. The Court of Protection’s initial approach drew a line between the two, whereby concepts of consent underpinning the criminal law under the Sexual Offences Act 2003 were not transferable to issues of capacity under the MCA 2005.

Under s30 of the Sexual Offences Act, a person commits an offence if he sexually touches another who is unable to consent due to a mental disorder and a consequent lack of understanding of the nature or implications of such conduct. The criminal

⁸ [2011] EWHC 101 COP.

⁹ [2014] EWCOP 9.

¹⁰ [2012] EWHC 49.

justice system is therefore retrospective, and the civil law prospective, and as such, both have different aims. However, in the Court of Appeal, Baker LJ said that the essence of the issue should remain fundamentally the same: to facilitate the protection of vulnerable adults from sexual violence. In order to ensure that people do not fall into the gaps between the two systems, the focus may be shifted more explicitly towards consent, rather than on a narrow model of intimacy on which the MCA's test is based. It could be argued that excluding an understanding of mutual consensuality based on the belief that non-consensual acts should be dealt with under the criminal framework is highly risky, especially in the case of JB, where police have previously exercised their discretion and taken no further action after incidents of alleged sexual violence [para 12]. Even if there was a guarantee of pursuing these cases in criminal courts, leaving matters to the criminal justice system goes against one of the fundamental duties of the Court of Protection, which is to protect people from harm. As simply put by Baker LJ: "The Mental Capacity Act and the Court of Protection do not exist in a vacuum; they are part of a wider system of law and legal justice" [para 6].

The concept of vulnerability may act as a barrier to sexual freedom because the rights of the person assumed to be 'vulnerable' can be overwritten in the interest of their protection, as demonstrated in JB and aforementioned cases. The recognition of the right to autonomy and the need to safeguard best interests are two principles that are evidently difficult to reconcile. Yet, requiring an understanding of mutual consensuality is a crucial step in the right direction to ensure an added layer of protection, particularly for vulnerable women. Baker LJ identifies 'relevant' information to include the other person's consent but interestingly lists it as a separate item of relevant information, rather than recognising that mutual consensuality is an intrinsic component of the 'nature and character' of sexual activity. The law continues to lack clarity and consistency in its application of the MCA's test, and therefore further judicial guidance on how to implement the provisions is likely to be sought.

Open Access This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article's Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

References

- Anderson, Michelle J. 2005. Negotiating sex. *Southern California Law Review* 78: 1401–1438.
- Benson, Paul. 2005. Feminist intuitions and the normative substance of autonomy. In *Personal Autonomy: New Essays on Personal Autonomy and its Role in Contemporary Moral Philosophy*, ed. James Taylor, 124–142. CUP.

- Bowcott, Owen. 2019. English judge says man having sex with wife is fundamental right, *The Guardian*. 2 April.
- Butler, Judith. 2004. *Precarious Life: The Powers of Mourning and Violence*. London and New York: Verso.
- Clough, Beverley. 2014. Vulnerability and capacity to consent to sex-asking the right questions? *Child and Family Law Quarterly* 26: 371–397.
- Currie, Lorraine. 2020. Capacity, consent and sexual relations: How latest case may help social workers navigate challenges, *CommunityCare*. 17 June.
- Fineman, Martha. 2008. The vulnerable subject: Anchoring equality in the human condition. *Yale J L & Feminism* 20: 1–23.
- Dworkin, Gerald. 1989. The concept of autonomy. In *The Inner Citadel: Essays on Individual Autonomy*, ed. John Christman, 54–62. Oxford: OUP.
- Home Office. 2000. *Setting the boundaries: Reforming the law on sex offences*. Home Office.
- Hollomotz, Andrea. 2011. *Learning Difficulties and Sexual Vulnerability: A Social Approach*. Jessica Kingsley Publishers.
- Kaeser, Fred. 1992. Can people with severe mental retardation have sex? *Sexuality and Disability* 10: 33–42.
- Kant, Immanuel and Mary J. Gregor. 1997. *Practical Philosophy: The Cambridge Edition of the Works of Immanuel Kant*. Cambridge: Cambridge University Press.
- Lindsey, Jaime. 2020. Protecting vulnerable adults from abuse: Under-protection and over-protection in adult safeguarding and mental capacity law. *Child and Family Law Quarterly* 32(2): 157–175.
- Mackenzie, Catriona, and Stoljar, Natalie (eds). 2000. *Relational Autonomy*. Oxford University Press.
- McCarthy, Michelle, and David Thompson. 1997. A prevalence study of sexual abuse of adults with intellectual disabilities referred for sex education. *Journal of Applied Research in Intellectual Disabilities* 10: 105–124.
- Munro, Vanessa. 2017. Shifting Sands? Consent, Context and Vulnerability in Contemporary Sexual Offences Policy in England and Wales. *Social and Legal Studies* 26: 417–440.
- Murphy, Ann. 2012. *Violence and the philosophical imaginary*. SUNY Press.
- Perlin, Michael and Lynch, Alison. 2016. *Sexuality, disability, and the law: Beyond the last frontier?* Palgrave Macmillan.
- Pritchard-Jones, Laura. 2020. A Local Authority V JB [2020] Ewca CIV 735 And A Local Authority V AW [2020] EWCOP 24: Rethinking Sexual Capacity? *Medical Law Review*. <https://doi.org/10.1093/medlaw/fwaa028>. Accessed 22 Sept 2020.
- Sandland, Ralph. 2013. Sex and capacity: The management of monsters? *The Modern Law Review* 76: 981–1009.
- Sawer, Patrick. 2018. Autistic woman allowed to have sex with numerous men ‘despite not being aware of dangers’. *The Telegraph*. 18 October.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.